

Aboveground Storage Tanks and Pipeline Facilities – Financial Responsibility

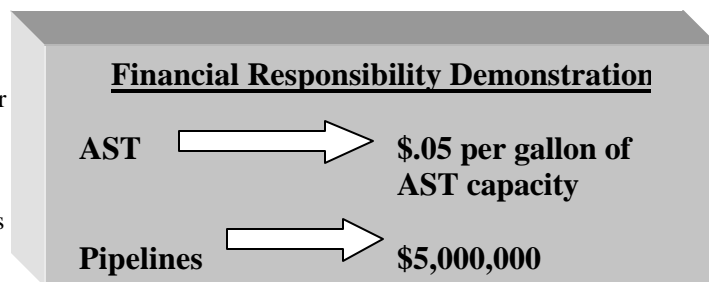
What is Financial Responsibility?

Under state law, operators of certain aboveground storage tank (AST) facilities and pipelines must demonstrate they have the financial resources to pay for the costs of containment and cleanup in the event of a discharge of oil from a regulated AST or pipeline. The financial responsibility requirements, effective March 2001, are in place to insure that sufficient financial resources are available to initiate prompt and effective cleanup measures. This helps to ensure that the Virginia Department of Environmental Quality, in partnership with operators of ASTs and pipelines, are able to provide the highest level of protection possible to human health and our natural resources. Operators of AST facilities and pipelines must demonstrate financial responsibility as a condition of operation in Virginia.

The financial responsibility requirements fall into two categories, known as “per occurrence” and “annual aggregate” amounts. Per occurrence means the amount of money an operator must demonstrate to pay the costs associated with a single discharge. Annual aggregate is the amount of financial responsibility an operator must demonstrate to cover similar costs for discharges that may occur in a one-year period. Operators must use the annual aggregate amount when determining their specific financial responsibility demonstration amounts. In the AST financial responsibility regulations, the per occurrence and annual aggregate financial responsibility amounts are identical.

How Much Financial Responsibility Am I Required to Demonstrate?

Operators of AST facilities must demonstrate five cents (\$.05) for every gallon of the aggregate AST capacity at all regulated facilities located in Virginia. This calculation is based on the cumulative AST storage capacity only at AST facilities that are subject to the financial responsibility regulations (i.e., AST facilities having an aggregate storage capacity of 25,000 gallons or greater). Facilities with an AST capacity less than 25,000 gallons are not subject to the financial responsibility requirements, nor are they considered in the calculation when determining financial responsibility amounts. For example, if Facility A has an aggregate storage capacity of 10,000 gallons and facilities B and C each have storage capacities of 50,000 each, only facilities B and C will be used in calculating the operator’s financial responsibility amount. Therefore, in this example the operator must demonstrate \$2,500 for each AST facility, or a total of \$5,000 of financial responsibility. Operators may use the same mechanism to demonstrate for all facilities located within the Commonwealth of Virginia that are subject to these regulations.



Operators of pipelines must demonstrate a set amount of five million dollars (\$5,000,000).

Who is Subject to the AST Financial Responsibility Rules?

The AST financial responsibility regulations apply to two types of regulated entities. They are operators of aboveground storage tank facilities having a maximum storage capacity of 25,000 gallons or greater and operators of pipelines.

For AST operators, storage capacity is determined on a “per facility” basis. If any single facility has an aggregate storage capacity of 25,000 gallons or greater, that facility is subject to the financial responsibility requirements. As such, it is possible for operators of multiple AST facilities to have some facilities that are subject to the financial responsibility requirements and others that are not, depending on the aggregate storage capacity of the facility in question. There is no threshold for operators of pipelines.

The AST and pipeline facility financial responsibility regulations contain a number of exemptions from the financial responsibility requirements. Among the exemptions are ASTs with a storage capacity less than or equal to 660 gallons; underground storage tanks; and ASTs operated by state, federal and local governments. Exempt units are excluded from regulation and are not counted as part of a facility’s aggregate storage capacity. A more complete list of AST financial responsibility exemptions can be found in the regulations at 9 VAC 25-640-30.

How Do I Demonstrate Financial Responsibility?

Operators may choose from six different financial assurance mechanisms to demonstrate financial assurance. The six mechanisms are outlined below.

Financial Test of Self-Insurance – a letter, signed by the Chief Financial Officer, which identifies assets, liabilities, and net worth of the organization. Requires verification of financial data (e.g., Dun & Bradstreet financial rating or statement from a Certified Public Accountant).

Guarantee – a corporate parent or affiliate assures proper coverage on behalf of the operator (i.e., the guarantor satisfies the financial test).

Surety Bond – a guarantee, issued by a licensed surety company, that it will meet financial responsibility obligations

in the event the operator is unable to perform the necessary cleanup activities or pay a third party to perform the activity.

Trust Agreement – monies covering an operator's financial responsibility obligation are held and administered by a regulated trustee.

Letter of Credit – promises to pay the financial responsibility amount in the event the operator fails to meet financial responsibility obligations (i.e., provides the funds necessary to clean up a petroleum discharge).

Insurance Policy – pollution liability policy obtained from a licensed insurer or risk retention group promising to pay for containment and cleanup in the event of a discharge; insurance may be in the form of a separate insurance policy or an endorsement to an existing policy.

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Operators may choose any one or combination of the mechanisms described above to satisfy the AST and pipeline facility financial responsibility regulations. Each mechanism requires that specific appendices to the regulation be completed in order to assure the operator's eligibility to use that mechanism. There are nine appendices to the regulation. The exact number of appendices an operator must complete will depend upon the mechanism he/she has chosen to use. For example, an operator using a trust agreement is required to complete three appendices while an operator using a corporate guarantee must submit a total of five. Table 1 identifies each mechanism and the appendices required for a complete financial assurance package.

Each appendix required by a specific mechanism must be filled out **completely** and must be worded **exactly** as it appears in the regulations (note that some appendices required additional attachments. For example, as part of the financial test of self-insurance, operators may need to include a statement from a Certified Public Accountant to verify financial data provided in the letter).

If you have questions regarding the AST financial responsibility requirements or how to prepare the documentation, please contact Josiah Bennett at (804) 698-4205 or Suzanne Taylor at (804) 698-4146 with the Office of Financial Assurance. A toll-free number is available for Virginia residents during normal business hours (8:15 a.m. – 5:00 p.m.). The toll-free number is (800) 592-5482. Information may also be accessed through the Virginia

Department of Environmental Quality's Petroleum Programs website, [www.deq.virginia.gov/tanks/](http://www.deq.virginia.gov/tanks/).

| Table 1. Required Contents of AST and Pipeline Facility Financial Responsibility Mechanisms                              |                          |                          |                             |                                   |                           |                                 |                                 |                                  |                                                  |
|--------------------------------------------------------------------------------------------------------------------------|--------------------------|--------------------------|-----------------------------|-----------------------------------|---------------------------|---------------------------------|---------------------------------|----------------------------------|--------------------------------------------------|
|                                                                                                                          | Appendix I<br>CFO Letter | Appendix II<br>Guarantee | Appendix III<br>Endorsement | Appendix IV<br>Cert. of Insurance | Appendix V<br>Surety Bond | Appendix VI<br>Letter of Credit | Appendix VII<br>Trust Agreement | Appendix VIII<br>Acknowledgement | Appendix IX<br>Cert. of Financial Responsibility |
| I                                                                                                                        | II                       | III                      | IV                          | V                                 | VI                        | VII                             | VIII                            | IX                               |                                                  |
| Self Insurance                                                                                                           | ✓                        |                          |                             |                                   |                           |                                 |                                 |                                  | ✓                                                |
| Guarantee                                                                                                                | ✓                        | ✓                        |                             |                                   |                           |                                 |                                 |                                  | ✓                                                |
| Surety Bond                                                                                                              |                          |                          |                             |                                   | ✓                         |                                 |                                 |                                  | ✓                                                |
| Trust Fund                                                                                                               |                          |                          |                             |                                   |                           |                                 | ✓                               | ✓                                | ✓                                                |
| Letter of Credit                                                                                                         |                          |                          |                             |                                   |                           | ✓                               |                                 |                                  | ✓                                                |
| Insurance Policy*                                                                                                        |                          |                          | ✓                           | ✓                                 |                           |                                 |                                 |                                  | ✓                                                |
| * Operator must complete either Appendix III or IV. Entire text of policy, including all endorsements, must be included. |                          |                          |                             |                                   |                           |                                 |                                 |                                  |                                                  |